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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 184

ARKANSAS VALLEY G & T, INC., et al., Petitioners

v.

FEDERAL POWER COMMISSION, et al., Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT ANSWER OF RESPONDENT RURAL ELECTRIC COOPERATIVES IN OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Dairyland Power Cooperative, Minnkota Power Cooperative, Inc., and Committee of Rural Electric Cooperatives, Respondents in the above-captioned cause, oppose the motion of Tri-State Generation and Transmission Association, Inc. for leave to file a brief *amicus curiae* in this case in support of the petition for a writ of certiorari.

In support of their opposition to Tri-State's motion, Respondent Rural Electric Cooperatives show:

1. Tri-State advises this Court that it is involved in litigation, in which it has thus far been unsuccessful, with the Wyoming Public Service Commission respecting that commission's jurisdiction over Tri-State's electric rates for sales made in Wyoming to Tri-State's members (Tri-State Motion, pp. 2-3).

2. Tri-State also advises this Court that its controversy with the Wyoming Commission is now before the United States Court of Appeals for the Tenth Circuit on appeal by Tri-State from an adverse ruling by the United States District Court for Wyoming. Following briefs and oral argument, the Tenth Circuit is considering "the question of whether the Wyoming Commission or the Federal Power Commission or either or both of them" have jurisdiction over the rates. (Tri-State Motion, p. 3.) It is the understanding of the Respondent Rural Electric Cooperatives that the case before the Tenth Circuit does not involve the question of FPC jurisdiction, but assuming it does, it is evident that Tri-State's "problem" (Motion, p. 2) should be decided in the Tenth Circuit where it was properly submitted for decision by Tri-State by its own action. Tri-State should not be permitted to inject its "problem" into this case.

3. Tri-State is concerned that the petitioners in this case will not argue, as Tri-State believes they should (Motion, pp. 4-5), that Federal Power Commission jurisdiction over interstate rates of REA rural electric cooperatives engaged in the generation and transmission of electric energy is necessary. Tri-State's disagreement with petitioners on the arguments they should make is not a ground for an *amicus brief*. The petitioners are ably represented by counsel who can be relied upon to present the factual and legal arguments they deem relevant to the issue petitioners seek to present to this Court.

4. Moreover, there is good reason for petitioners' restraint, for as the court of appeals correctly held (Pet. for Cert., App. A-I, pp. 6a-7a):

> "Though REA regulation and supervision of cooperatives are, in many respects, far more comprehensive than that which the Federal Power Commission exercises over investor-owned utilities, there are certain areas, such as rate-making, where the cooperatives enjoy a freer hand. But it is in these areas that, by their structural nature, the cooperatives are effectively self-regulating. They are completely owned and controlled by their consumer-members, and only consumers can become members. They are non-profit. Each member has a single vote in the affairs of the cooperative, and service is essentially limited to members. No officer receives a salary for his services and officers and directors are prohibited from engaging in any transactions with the cooperative from which they can earn any profit." (footnote omitted)

5. Tri-State's participation in this case will confuse, rather than sharpen, the issue presented by the petitioners and will not be of assistance to the Court.

WHEREFORE, the Respondent Rural Electric Cooperatives oppose Tri-State's motion for leave to file a brief *amicus curiae* and pray that it be denied.

Respectfully submitted,

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